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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/545,549	04/07/2000	Tomoyuki Hirano	P00,0253	1881

26263 7590 09/06/2002

SONNENSCHEIN NATH & ROSENTHAL  
P.O. BOX 061080  
WACKER DRIVE STATION  
CHICAGO, IL 60606-1080

[REDACTED]  
EXAMINER

GOUDEXAU, GEORGE A

ART UNIT	PAPER NUMBER
1763	[REDACTED]

DATE MAILED: 09/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)
09-545,549	Hirano et. al.
Examiner	Group Art Unit
George Goudreau	1763

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 days (MONTHS) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

Responsive to communication(s) filed on papers # (1-6) filed on (4-00' to 11-00).  
 This action is FINAL.  
 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 1-4 is/are pending in the application.  
 Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 Claim(s) \_\_\_\_\_ is/are allowed.  
 Claim(s) \_\_\_\_\_ is/are rejected.  
 Claim(s) \_\_\_\_\_ is/are objected to.  
 Claim(s) 1-4 are subject to restriction or election requirement

### Application Papers

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.  
 The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner  
 The specification is objected to by the Examiner.  
 The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All  Some\*  None of the:

Certified copies of the priority documents have been received.  
 Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
 Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413  
 Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152  
 Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

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15. Claim 1 is generic to a plurality of disclosed patentably distinct species comprising the following:

- 1.) a wet etch is used as the 4 Th etching step (i.e.- claims 2, 4); and
- 2.) a dry etch is used as the 4 Th etching step (i.e. - claim 3)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to attorney John D. Simpson on 9-5-02' to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventor ship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any

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amendment of inventor ship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner George A. Goudreau whose telephone number is (703) -308-1915. The examiner can normally be reached on Monday through Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Examiner Gregory Mills, can be reached on (703) -308-1633. The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) -306-3186.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-0661.



George A. Goudreau/gag

Primary Examiner

AU 1763